

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIE EDWARDS,	)	No. C 08-1923 CW
	)	
Petitioner,	)	
	)	ORDER GRANTING
v.	)	CERTIFICATE OF
	)	APPEALABILITY
BEN CURRY, Warden,	)	
	)	
Respondent.	)	

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Petitioner filed a habeas corpus petition pursuant to 28 U.S.C. § 2254. On June 30, 2009, the Court entered judgment denying the petition. Petitioner filed a notice of appeal on July 28, 2009.

A habeas petitioner may not appeal a final order in a federal habeas proceeding without first obtaining a certificate of appealability (formerly known as a "certificate of probable cause to appeal"). 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of appealability should be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).<sup>1</sup> The certificate

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<sup>1</sup>Section 2253(c)(2) codified the standard announced by the United States Supreme Court in Barefoot v. Estelle, 463 U.S. 880, 892-93 (1983). In Barefoot, the Court explained that "a substantial showing of the denial of [a] federal right" means that a petitioner "must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner], or that the questions are adequate to deserve encouragement to proceed further." Id. at 893 n.4.

1 of appealability must indicate which issue or issues satisfy the  
2 showing required by § 2253(c)(2). 28 U.S.C. § 2253(c)(3).

3 Petitioner challenged his denial of suitability for parole  
4 on due process grounds, arguing that (1) there was not "some  
5 evidence" supporting the parole board's decision; (2) the parole  
6 board improperly relied in the immutable circumstances of the  
7 commitment offense; (3) the denial of a subsequent suitability  
8 hearing for four years was excessive; and (4) that a parole  
9 regulation upon which the state courts had relied was  
10 unconstitutionally vague. The Court finds that Petitioner has  
11 made a sufficient showing of the denial of a constitutional right  
12 to justify a certificate of appealability with regard to the  
13 first two issues. The certificate of appealability is denied on  
14 the latter two issues for the reasons explained in the Court's  
15 June 30, 2009 Order Denying Petition for Writ of Habeas Corpus.

16 CONCLUSION

17 Accordingly, the Court grants, in part, Petitioner's  
18 certificate of appealability.

19  
20 IT IS SO ORDERED.

21  
22 DATED: 8/21/09



23 CLAUDIA WILKEN  
24 United States District Judge  
25  
26  
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